

(1993) 01 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2743 of 1993

Shyam Singh and Others

APPELLANT

Vs

Meerut Mandal Vikas Nigam and Another

RESPONDENT

Date of Decision : 29-01-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 2 AWC 1257

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Arvind Kumar, for the Appellant;

Judgement

Sudhir Narain, J.—I have heard the learned Counsel for the parties, on the question regarding payment of court-fees

2. The learned Counsel for the Petitioners urged that the decision of the taxation officer on the payment of court-fee is erroneous in law.

3. The facts in brief are that the Petitioners were employed under the Meerut Mandal, Vikas Nigam, Meerut. The notices were issued to Petitioners for retrenchment of their services. The basis of the retrenchment is alleged to be a policy decision of the Government that the Nigam shall be closed and there was no option for the Nigam except retrenchment of the services of the Petitioners. There is no dispute that the appointment letters were separately Issued to each of the Petitioners and their services were terminated separately. These Petitioners have challenged the orders of termination, which were passed separately and filed as Annexures-2 to 16 to the writ petition.

4. Learned Counsel for the Petitioners urged that the services of the Petitioners have been terminated on the basis of the policy decision of the Government and the termination orders were issued in consequence to the said policy decision. The Petitioners are entitled to file writ petition jointly and pay single court-fee.

5. The learned Counsel for the Petitioners placed reliance upon the case of Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, . In this case, Full Bench, answered five questions. Question No. 2 was as follows;

Whether a single writ petition under Article 226 of the constitution is maintainable on behalf of more than one Petitioners not connected with each other as partners or those who have no other legal subsisting jural relationship where the question of law and fact involved in the petition are common?

The court held that the Joint writ petition would be maintainable if there is legally subsisting jural relationship of persons between them or if they have same cause of action. The Court observed as follows:

It appears to us that according to this decision a joint writ petition would be validly maintainable if there is a legally subsisting jural relationship of persons between them or if they have the same cause of action. In substance, this decision applies the same principle of procedure as was enunciated by the Full Bench of our court in Mall Singh's case namely, generally joinder of more than one person can be permitted in a proceeding under Article 226 where the right to relief arises out of the same act or transaction or where the Petitioners are jointly interested in the cause of action and a common question of law or fact arises. In other words, joinder of more than one person is permissible when the cause of action is the same. Such joinder may not be permissible if the cause of action is similar.

6. In the present case the cause of action is not the same. The contract of service of each of the Petitioners was separate. The cause of action in each case is not the same, each of the Petitioners have their own cause of action and none of the Petitioners are related to each other or there is any jural relationship between them.

7. The learned Counsel for the Petitioners placed reliance upon the case of Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, . In this case, circulars issued by the Railway Board, were challenged. The question was whether the writ petition by non recognized association was maintainable. In this case maintainability of several Petitioners joining together in writ petition was not decided. This case was considered in Umesh Chandra's case (supra) and was distinguished on the ground that the observations made in the said case related to locus standi of the Petitioner and had no bearing on the question of joinder of Petitioners.

8. In the case of A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, , the Petitioners challenged the service rules and the seniority list based on such rules, the Supreme Court took the view that joint writ petition was maintainable even if the date of appointment, promotion etc. were different and court had power to mould relief and give such direction to

the Respondents to reconsider the seniority list with reference to each of the Petitioners It was the case where service rules was challenged but in the present case the policy decision had not been challenged but the Petitioners have prayed for quashing the orders of termination passed separately against them and providing the Petitioners alternative employment in Government Services or Government Corporations and other organisations

9. In *Mota Singh and Others Vs. State of Haryana and Others*, , where several truck operators filed a single writ petition challenging the liability on each one of them to pay tax, the Court took the view that every owner of the truck plying truck for transport of goods has a liability to pay tax, they had no relationship with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay court-fee separately. The Court observed as follows:

Having regard to the nature of these cases where every owner of a truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition...

10. In *Mohd Azaz v. Madhyamik Shiksha Parishad* 1990 SCC 507 (FB) where several students joined together in single writ petition challenging the order passed by Board of High School and Intermediate Education, withholding the result, on the ground of using of unfair means. Full Bench of this Court held that using of unfair means by a number of students on different dates and in different subject, there was no jural relationship between them and joint writ petition by such students was not maintainable. The Full Bench, of the Court observed as follows:

In the case of using unfair means by a number of students on different dates and in different subjects, there Is no jural "relationship between the students using unfair means in different subjects and in different centres or even in the same centre. A Joint writ petition by person being no such relationship is not maintainable though Joint writ petition can be maintained by a small group for whom the cause of action is the same or It can be said that there la some jural relationship

11. In the present case each of the Petitioner has a separate cause of action as they were appointed by separate orders, each of them entered into contract of service separately, their services have been terminated separately, there was thus no jural relationship between them Their cause of action may be similar but having regard to the foots in the present case single writ petition is validly not maintainable but nonetheless they having Joined together, each of the Petitioner Is liable to" pay court-fees separately as if they have filed separate writ petitions. In *Umesh Chandra's* case (*Supra*) the Court observed as follows:

Where a single writ petition by an association or by more than one persons is

maintainable as mentioned above, only one set of court-fees would be payable. The levy of court fee will not depend on the number of persons who have joined in the writ petition. But where a single writ petition is not validly maintainable, but nonetheless several persons Join in It, then the principle laid down in Mota Singh's case will Apply; namely each Petitioner will have to pay court-fee separately as if he had filed a separate writ petition In such cases the will petition may not, in the discretion of the Court, be dismissed outright. The defect of misjoinder of Petitioners can be oured by requiring each Petitioner to pay separate court-fees.

12. The learned Counsel for the Petitioners, in the last prayed for and is granted three days time to pay court-fees. The Petitioners are granted time to pay court-fees by 1st February 1993. Put up on 1st February 1993.